

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF JACKSON PURCHASE)
ELECTRIC COOPERATIVE CORPORATION FOR)
AN ORDER AUTHORIZING THE CORPORATION)
TO BORROW AN AMOUNT NOT TO EXCEED)
\$1,343,000.00 FROM THE UNITED STATES)
OF AMERICA (REA), AND \$575,000.00 FROM)
THE LOUISVILLE BANK FOR COOPERATIVES)
FOR THE PURPOSE OF PURCHASING FACILITIES)
OF KENTUCKY UTILITIES COMPANY IN ACCORD-)
ANCE WITH AN EXPIRED WHOLESALE POWER)
SUPPLY AGREEMENT WITH KENTUCKY UTILITIES)
COMPANY)

CASE NO.
7787

O R D E R

Background

On December 1, 1967, Jackson Purchase Electric Cooperative Corporation ("Jackson Purchase") and Kentucky Utilities Company ("Kentucky Utilities") executed a wholesale electrical energy requirements contract, for a primary term of 10 years, commencing January 1, 1968. The contract provided that it would terminate on December 31, 1977, upon notice by either party, which was given by Kentucky Utilities on January 9, 1975. The contract also provided that certain transmission lines, to be acquired or constructed by Kentucky Utilities to serve the contract, would be purchased by Jackson Purchase from Kentucky Utilities if Jackson Purchase discontinued "taking service from such facilities," within 60 days of such discontinuance, at their "depreciated

value." Depreciated value was defined in that contract to mean depreciated original cost. Even though the original rates and terms for power were supplanted by subsequent contracts, Jackson Purchase continued to purchase its power from Kentucky Utilities (and the facilities were used to transmit that power), so the provisions for purchase of the dedicated lines from Kentucky Utilities were never invoked by either party. No reference was made to these contract provisions by either party at the time the original power contract was terminated.

On May 22, 1979, Kentucky Utilities and Jackson Purchase entered into a number of new electrical energy requirements contracts which made no reference whatever to the transmission lines. Thereafter, on December 31, 1980, by separate agreement relating only to the transmission facilities, Jackson Purchase and Kentucky Utilities agreed that Jackson Purchase would purchase the dedicated facilities from Kentucky Utilities at their "depreciated reproduction cost." Evidence presented at the hearing on October 20, 1983, showed that this substitution of "reproduction cost" for "original cost" in the computation of the purchase price increased the cost to Jackson Purchase by \$1,194,558. The terms of that agreement contemplated an immediate transfer of the lines to Jackson Purchase with a provision that the lines be leased back to Kentucky Utilities during the time that Jackson Purchase continued to purchase power from Kentucky Utilities for transmission over the lines.

On or about March 27, 1980, Jackson Purchase filed an application with this Commission under the provisions of KRS 278.300,

for approval of a proposed borrowing from the Rural Electrification Administration ("REA") of \$1,343,000, and \$575,000 from the Louisville Bank for Cooperatives ("LBC") for the purpose of purchasing the transmission lines from Kentucky Utilities at the higher depreciated reproduction cost specified in the December 31, 1980, agreement. Jackson Purchase failed to furnish certain information concerning the proposed sale, and the Commission denied the authority requested in the application by Order issued June 17, 1981. Upon Jackson Purchase's Motion to Reconsider, the Commission finally granted approval for the borrowing, but specified that the funds not be drawn down until further permission of the Commission was obtained. The grounds for the Commission's reluctance at that time were that Jackson Purchase had not offered evidence to show that it was in the best interests of the customers of Jackson Purchase for the Co-op to be the owner (even though the lines were leased back to Kentucky Utilities) and carry the cost of such lines while they were dedicated to the Kentucky Utilities-Jackson Purchase service.

Current Proceeding

On August 18, 1983, Jackson Purchase filed a "Motion to Redocket" the case, asking for authority to draw down the funds and pay Kentucky Utilities the purchase price for the transmission lines specified in the second agreement ("depreciated reproduction cost"). The Attorney General intervened and participated in the case. On October 14, 1983, the Commission ordered Jackson Purchase to furnish a number of items of information concerning the substitution of "reproduction cost"

for "original cost" in the purchase price of the transmission lines, including studies, minutes of board meetings, and any other contemporary justification for entering into the contract of December 31, 1980. On October 14, 1983, the Commission ordered that Kentucky Utilities and Big Rivers Electric Corporation be made parties to this proceeding as necessary parties to its decision of this case, on the ground that the appropriate treatment of the purchase price of the transmission facilities for rate-making purposes and the circumstances relating the proposed adoption of the existing contract price between Kentucky Utilities and Jackson Purchase should be examined by the Commission. Both parties appeared for this special purpose.

At the hearing on October 20, 1983, Jackson Purchase offered the testimony of Mr. Jack Gaines, a consultant with Southern Engineering, Inc., and Dan Walton, Esquire, an attorney with personal knowledge of some of the events surrounding and leading up to the negotiation of a new purchase price between Jackson Purchase and Kentucky Utilities. No documentary evidence had been discovered to support the transaction, and the testimony generally tended to prove only that Kentucky Utilities had demanded an increased price after the expiration of the original 10-year term of the 1967 contract, and that this was acceded to by Jackson Purchase during the negotiation of the settlement of a rate proceeding before the Federal Energy Regulatory Commission in 1978, but that the terms of such agreement were not reduced to writing and executed by the parties for several months, on

December 31, 1980. Although it asserted that there was consideration for the change in price in the rates thereafter received, Jackson Purchase admitted that it could not quantify any benefits received by it from Kentucky Utilities to justify the increased purchase price.

Based upon all of the above and being advised, the Commission finds that:

1. Jackson Purchase has not carried its burden of proof to support its contention that the increase in the purchase price from original cost to reproduction cost is in the best interest of its ratepayers and the public.

2. On the evidence presented and in accordance with past policy on such issues, this Commission will not allow Jackson Purchase to recover the difference between the depreciated original cost and reproduction cost of the transmission lines in any succeeding rate proceeding.

3. In view of the pending change of power suppliers on January 1, 1984, from Kentucky Utilities to Big Rivers, however, such lines are essential and their acquisition by Jackson Purchase or Big Rivers is in the public interest since there is not sufficient time to build new facilities.

4. The Commission has previously authorized financing from REA and LBC for the purpose of purchasing these facilities, and authorization is hereby granted to draw such funds for such purpose upon the closing of this transaction with Kentucky Utilities.

5. There was insufficient evidence offered by Jackson Purchase to show that any benefits flowed from Kentucky Utilities to Jackson Purchase to support the substitution of reproduction cost for original cost in the formula agreed to by the parties as the purchase price for the transmission lines.

6. This approval of the financing of the purchase price at the formula in the December 31, 1980, contract between Kentucky Utilities and Jackson Purchase should be conditioned on the contingency that Jackson Purchase pursue any legal remedies available to it to avoid payment of or recover from Kentucky Utilities (or anyone else liable) the excess cost above depreciated original cost.

IT IS THEREFORE ORDERED that:

1. Jackson Purchase is authorized to draw down REA funds and LBC funds in the amounts of \$1,343,000 and \$575,000 respectively, as applied for; and

2. Jackson Purchase immediately institute and pursue any and all legal remedies available to it to avoid payment of or recover the excess of such amounts over the depreciated original cost required under its original agreement with Kentucky Utilities, dated December 1, 1967, for purchase of such facilities.


IT IS FURTHER ORDERED that within 30 days of the date of closing of the purchase of the Kentucky Utilities transmission facilities Jackson Purchase shall file all journal entries made to record said facilities on its books in accordance with the uniform system of accounts.

Done at Frankfort, Kentucky, this 11th day of November, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary